



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51

[EPA-HQ-OAR-2013-0694, FRL-9903-28-OAR]

#### **Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan (SIP) Provisions for the 1997 Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standard (NAAQS) and 2006 PM<sub>2.5</sub> NAAQS**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** On January 4, 2013, in *Natural Resources Defense Council (NRDC) v. EPA*, the D.C. Circuit Court (Court) remanded to the EPA the “Final Clean Air Fine Particle Implementation Rule” (April 25, 2007) and the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM<sub>2.5</sub>)” final rule (May 16, 2008) (collectively, “1997 PM<sub>2.5</sub> Implementation Rules”). The Court found that the EPA erred in implementing the 1997 PM<sub>2.5</sub> National Ambient Air Quality Standards (NAAQS) pursuant solely to the general implementation provisions of subpart 1 of Part D of Title I of the Clean Air Act (CAA or Act), without also considering the particulate matter-specific provisions of subpart 4 of Part D. The Court's ruling remanded the rules to the EPA to address implementation of the 1997 PM<sub>2.5</sub> NAAQS under subpart 4. This proposed rulemaking identifies the classification under subpart 4 for areas currently designated nonattainment for the 1997 and/or 2006 PM<sub>2.5</sub> standards, the deadlines for states to submit attainment-related and new source review (NSR) state implementation plan (SIP) elements required for these areas pursuant to subpart 4, and the EPA guidance that is currently available regarding subpart 4

requirements. The proposed deadlines for 1997 and 2006 PM<sub>2.5</sub> attainment-related SIP submissions and NSR requirements for nonattainment areas would replace previous deadlines that were set solely pursuant to subpart 1. Specifically, the EPA is proposing to identify the initial classification of current 1997 and/or 2006 PM<sub>2.5</sub> nonattainment areas as “moderate,” and the EPA is proposing to set a deadline of December 31, 2014, for submission of remaining required SIP submissions for these areas, pursuant to and considering the application of subpart 4. This rulemaking affects eight nonattainment areas in five states.

**DATES:** *Comments.* Comments must be received on or before **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2013-0694 by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email:* [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov)
- *Mail:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA-HQ-OAR- 2013-0694, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW, Washington, D.C. 20460. Mail Code: 28221T. Please include two copies if possible. In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St. NW, Washington, D.C. 20503.
- *Hand Delivery:* Air and Radiation Docket and Information Center, Attention Docket ID No. EPA-HQ-OAR-2013-0694, Environmental Protection Agency in the EPA

Headquarters Library, Room Number 3334 in the WJC West Building, located at 1301 Constitution Ave., NW, Washington, D.C. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m. Eastern Standard Time (EST), Monday through Friday, Air and Radiation Docket and Information Center.

- Instructions: Direct your comments to Docket ID No. EPA-HQ-OAR-2013-0694. The EPA's policy is that all comments received will be included in the public docket without change and may be made available on-line at [www.regulations.gov](http://www.regulations.gov), including any personal information provided, unless the comment includes information claimed to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [www.regulations.gov](http://www.regulations.gov) or email. The [www.regulations.gov](http://www.regulations.gov) website is an “anonymous access” system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through [www.regulations.gov](http://www.regulations.gov), your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any CD you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and be free of any defects or viruses. For additional information about the EPA’s public docket, visit the EPA Docket Center homepage at

*<http://www.epa.gov/epahome/dockets.htm>*. For additional instructions on submitting comments, go to the SUPPLEMENTARY INFORMATION section of this document.

*Docket:* All documents in the docket are listed in *www.regulations.gov*. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center in the EPA Headquarters Library, Room Number 3334 in the WJC West Building, located at 1301 Constitution Ave., NW, Washington, D.C. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744.

**FOR FURTHER INFORMATION CONTACT:** For further general information on this rulemaking, contact Ms. Mia South, Air Quality Policy Division, Office of Air Quality Planning and Standards (C539-01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number (919) 541-5550; fax number (919) 541-5315; email at *south.mia@epa.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

Entities potentially affected directly by this proposal include state, local and tribal governments.

*B. What should I consider as I prepare my comments for the EPA?*

*1. Submitting CBI.* Do not submit CBI information to the EPA through [www.regulations.gov](http://www.regulations.gov) or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information on a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed to be CBI must be submitted for inclusion in the public docket. Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

*2. Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, *Federal Register* date and page number).
- Follow directions - The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.

- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

*C. Where can I get a copy of this document and other related information?*

In addition to being available in the docket, an electronic copy of this notice will be posted at <http://www.epa.gov/airquality/particledollution/actions.html>.

*D. How is this notice organized?*

The information presented in this notice is organized as follows:

- I. General Information
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    - F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
    - G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks
    - H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.
    - I. National Technology Transfer and Advancement Act
    - J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations
- Statutory Authority

## List of Subjects

### **II. What actions is the EPA proposing?**

The EPA's proposed rulemaking responds to the Court's remand in *NRDC v. EPA* by notifying the states of the EPA's initial modification of its previous approach to implementation of the 1997 and 2006 PM<sub>2.5</sub> standards. This proposed rulemaking identifies: (1) the classification under subpart 4 of areas currently designated nonattainment for the 1997 and/or 2006 PM<sub>2.5</sub> standards; (2) the deadline for states to submit any remaining attainment-related and NSR SIP submissions required pursuant to subpart 4; and (3) the EPA guidance and relevant rulemakings that are currently available regarding implementation of subpart 4 requirements. Specifically, the EPA is proposing to identify the initial classification of areas currently designated nonattainment for the 1997 and the 2006 PM<sub>2.5</sub> standards as "moderate," and to set a deadline of December 31, 2014, for submission of any attainment-related and NSR SIP elements that may be due for these areas in consideration of the requirements under subpart 4. Additional details regarding attainment-related and NSR SIP elements requirements of subpart 4 may also be addressed under separate EPA guidance and/or rulemaking. With regard to SIPs that previously have been submitted solely under the requirements of subpart 1, and which are now also subject to subpart 4 requirements, states should consult with their respective EPA regional offices for assistance in evaluating the appropriate course for addressing the effect of subpart 4 requirements on these submissions and for accomplishing any additional state work and the EPA review. The EPA expects that the existing submittals will already satisfy many of the subpart 4 requirements, and, to the extent that additional

information is needed for specific requirements, every effort will be made to avoid duplicative work from the states.

### **III. Background for Proposal**

On January 4, 2013, in *NRDC v. EPA*, the D.C. Circuit Court remanded to the EPA the 1997 PM<sub>2.5</sub> Implementation Rules. 706 F.3d 428 (D.C. Cir. 2013). Prior to the Court's decision, and continuously since 2005, the EPA had implemented the 1997 and 2006 PM<sub>2.5</sub> NAAQS pursuant to regulations and guidance<sup>1</sup> that were based on the general implementation provisions of subpart 1 of Part D of Title I of the CAA. The Court found that the EPA erred in implementing the 1997 PM<sub>2.5</sub> NAAQS solely pursuant to subpart 1 of Part D of Title I of the CAA, without consideration of the particulate matter-specific provisions of subpart 4 of Part D. In this proposed rulemaking, the EPA takes additional steps to respond to the Court's remand,<sup>2</sup> and to address the implementation of the 1997 and 2006 PM<sub>2.5</sub> NAAQS under subpart 4. In light of the long history of implementation of these standards under subpart 1, the EPA's proposal seeks to integrate and harmonize ongoing implementation under subpart 1 with the subpart 4 requirements the Court has directed the EPA to address.

### **IV. Proposed Initial Identification of "Moderate" Classification for PM<sub>2.5</sub>**

#### **Nonattainment Areas Under Subpart 4**

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<sup>1</sup> "Implementation Guidance for the 2006 24-Hour Fine Particle (PM<sub>2.5</sub>) National Ambient Air Quality Standards (NAAQS)," from Stephen D. Page, Director, Office of Air Quality Planning and Standards, to Regional Air Directors, Region I-X, March 2, 2012. This guidance was withdrawn on June 6, 2013.

<sup>2</sup> The EPA has previously addressed the NRDC decision and the role of subpart 4 in PM<sub>2.5</sub> implementation in numerous rulemakings on individual areas. See areas listed in footnote 4, below.



Subpart 1 of Part D contains no nondiscretionary provision for classification of nonattainment areas, although it authorizes the EPA to make classifications if it considers such classification appropriate. As a result, under the EPA's prior approach to implementing the 1997 and 2006 PM<sub>2.5</sub> standards, the EPA did not identify any classifications for areas designated nonattainment for those standards. By contrast, subpart 4 of the CAA, section 188, provides that all areas designated nonattainment are initially classified "by operation of law" as "moderate" nonattainment areas, and they remain classified as moderate nonattainment areas unless and until the EPA later reclassifies them as serious nonattainment areas.<sup>3</sup> Pursuant to this provision, the EPA is proposing in this notice to identify the classification of all PM<sub>2.5</sub> areas currently designated nonattainment for the 1997 and 2006 NAAQS as "moderate." Thus the provisions of subpart 4 relevant to areas currently designated nonattainment for 1997 and/or 2006 PM<sub>2.5</sub> NAAQS would initially be those applicable to moderate areas. For more information on current nonattainment areas, *see* 1997 PM<sub>2.5</sub> Nonattainment Areas, <http://www.epa.gov/oaqps001/greenbk/qnc.html> and 2006 PM<sub>2.5</sub> Nonattainment Areas, <http://www.epa.gov/oaqps001/greenbk/rnc.html>.

The areas that are most clearly affected by this rule are areas that did not submit a SIP under subpart 1 and which do not have a clean data determination or which have not yet submitted a redesignation request. The states and specific nonattainment areas affected for the PM<sub>2.5</sub> 1997 areas are Libby, MT, San Joaquin Valley, CA and the Los Angeles-South Coast Air Basin, CA. For the 2006 PM<sub>2.5</sub> nonattainment areas, the states

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<sup>3</sup> In the General Preamble, the EPA has previously addressed the requirements of section 188 concerning classifications under subpart 4, including the issue of discretionary and mandatory reclassification from moderate to serious. *See* 57 FR 13498, at 13537-8.

and specific nonattainment areas affected are Fairbanks, AK, Imperial County, CA, Liberty-Clairton, PA, Provo, UT and Salt Lake City, UT.

The subpart 4 requirements for areas classified as moderate are generally comparable to those of subpart 1. The general provisions for requirements for all nonattainment areas for subpart 4 include: (1) Section 189 (a)(1)(A) (NSR permit program); (2) section 189 (a) (1) (B) (attainment demonstration); (3) section 189 (a)(1)(C) [reasonably available control measures (RACM) and reasonable available control technology (RACT)]; (4) section 189 (c) [request for proposals (RFP) and quantitative milestones]; and (5) section 189 (e) (precursor requirements for major stationary sources). Subpart 4 also includes additional statutory SIP planning requirements in the event that EPA reclassifies a moderate nonattainment area to a serious nonattainment area and in the event the area needs additional extensions of time to attain the NAAQS. The General Preamble and Addendum provide useful additional guidance on the specific subpart 4 statutory requirements.

## **V. Proposed Deadlines for Submission of Remaining Required Attainment-Related SIP Elements**

In 2013, the D.C. Circuit Court in *NRDC v. EPA* directed the EPA to modify its regulatory approach to implementing the 1997 PM<sub>2.5</sub> standard solely under subpart 1. The EPA's subpart 1-based rulemakings were issued in 2007 and 2008, and for more than 5 years they have governed the EPA's and the states' implementation efforts. Prior to the Court's decision, states understandably have worked towards meeting the air quality goals of the 1997 and 2006 standards in accordance with the EPA regulations and guidance derived from subpart 1. During this time, many PM<sub>2.5</sub> nonattainment areas have

attained the 1997 and 2006 PM<sub>2.5</sub> standards and/or submitted SIPs aimed at attainment, including, among other requirements, nonattainment NSR permitting programs. The EPA must therefore respond to the Court's remand in the context of the states' prior and ongoing efforts to attain the standards under the framework of subpart 1. The EPA takes this history into account in proposing to set a new deadline for any remaining submissions that may be required for a moderate nonattainment area due to the applicability of subpart 4. It is important for EPA to set a new deadline in order to give states the opportunity to address the interpretation announced by the Court earlier this year. In rulemakings on individual areas subsequent to the Court's decision, the EPA has explained in detail its view that the Court's recently announced interpretation should not be applied retroactively. *See*, for example, "Approval and Promulgation of Air Quality Implementation Plans; Indiana; Redesignation of the Indianapolis Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter" (78 FR 20856, April 8, 2013 - proposal), (78 FR 41698, July 11, 2013 - final). The EPA has continued to consider and act upon submissions already made, explaining in those individual rulemakings how the

EPA has taken into account the NRDC Court's decision.<sup>4</sup> Notwithstanding those actions, there are areas for which states are required to make additional submissions under subparts 1 and 4. With respect to those areas the EPA believes that states should be provided a reasonable opportunity to make such submissions. Based on the EPA interactions with states regarding the implementation of the PM<sub>2.5</sub> NAAQS for the areas likely to be most affected by this rule, we anticipate that establishing a clear submittal date would help support NAAQS implementation and that approximately 1 year would provide an additional amount of time for development of any additional SIP submittal for these areas if needed.

The EPA is therefore proposing to set a deadline of December 31, 2014, for the states to submit any additional attainment-related SIP elements that may be needed to meet the applicable requirements of subpart 4 for areas currently designated nonattainment for the 1997 and/or 2006 PM<sub>2.5</sub> NAAQS, and to submit SIPs addressing the nonattainment NSR requirements in subpart 4. The EPA believes that this period

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<sup>4</sup> In addition to the Indianapolis redesignation, since the NRDC Court's decision, the EPA has considered the role of subpart 4 in PM<sub>2.5</sub> implementation in a number of other individual rulemakings: "Redesignation of Ohio Portions of Parkersburg-Marietta and Wheeling Areas to Attainment of the 1997 Annual Standard for Fine Particulate Matter" (78 FR 53275, August 29, 2013), "Redesignation of the Detroit-Ann Arbor Area to Attainment of the 1997 and 2006 Standards for Fine Particulate Matter" (78 FR 53272, August 29, 2013), "Redesignation of the Cleveland-Akron-Lorain Area for the 1997 Annual and 2006 24-Hour Standards" (78 FR 57270, September 18, 2013), "Redesignation of Ohio Portion of the Steubenville-Weirton Area for the 1997 Annual and 2006 24-Hour Standards" (78 FR 57273, September 18, 2013), "Redesignation of Dayton-Springfield, OH Nonattainment Area for 1997 PM-2.5" (78 FR 59258, September 26, 2013), "Redesignation of Canton-Massillon OH Nonattainment Area for 1997 PM-2.5" (78 FR 62459, October 22, 2013), and "Proposed Approval of Delaware Attainment Plan for the Delaware Portion of the Philadelphia-Wilmington, Pennsylvania-New Jersey-Delaware Nonattainment Area for the 1997 Annual Fine Particulate Matter Standard" (78 FR 57573, September 19, 2013).

provides a relatively brief but reasonable amount of time for states to ascertain whether and to what extent any additional submissions are needed for a particular 1997 or 2006 PM<sub>2.5</sub> nonattainment area,<sup>5</sup> and to develop, adopt and submit any such SIPs. Section 188(c)(1) of Subpart 4 establishes an attainment deadline of no later than the end of the sixth calendar year after designation as nonattainment. With respect to the 2006 24-hour PM<sub>2.5</sub> NAAQS, nonattainment area designations for most areas became effective in December 2009 (74 FR 58688, November 13, 2009). Thus, these areas are subject to an attainment deadline under subpart 4 of no later than December 31, 2015. A SIP submission deadline of December 31, 2014, for these areas will therefore ensure that there is at least a year between SIP submission and attainment deadlines.<sup>6</sup> The December 31, 2014, deadline would allow a brief but reasonable amount of time for the states to modify their SIPs in consideration of subpart 4 in keeping with the timeframe established

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<sup>5</sup> The answers to these questions will depend upon the circumstances of each individual nonattainment area, including whether the area's monitored air quality meets the standard, and whether the state has already made attainment-related and NSR SIP submissions for the area. As the EPA has explained in its proposed rulemaking on Approval and Promulgation of Air Quality Implementation Plans; Indiana; Redesignation of the Indianapolis Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter (78 FR 20856, April 8, 2013), it is also important to evaluate, for each area, the interrelationship of the two subparts, and whether the substance of subpart 1 and subpart 4 provisions, should, for certain purposes, be considered equivalent.

<sup>6</sup> The EPA designation for the West Central Pinal area in Arizona as nonattainment for the 2006 24-hour PM<sub>2.5</sub> standard became effective March 7, 2011. *See* 76 FR 6056, February 3, 2011. Although the latest attainment date applicable to this area under subpart 4 is December 31, 2017 (2 years later than the December 31, 2015, attainment date that applies to areas designated nonattainment in 2009), the EPA is proposing to require Arizona to submit an attainment SIP meeting the requirements of subpart 4 for the 2006 24-hour PM<sub>2.5</sub> standard for this area by the same December 31, 2014, date that we are proposing for other nonattainment areas. The December 31, 2014, SIP submission date would supplant the March 7, 2014, date by which the state was previously required under subpart 1 to submit a PM<sub>2.5</sub> attainment SIP for this area, and would provide a reasonable amount of additional time for the state to both develop the required subpart 4 SIP elements and implement its control strategy in advance of the applicable attainment date.

by the existing subpart 4 attainment deadline. With respect to the 1997 Annual PM<sub>2.5</sub> NAAQS, although nonattainment area designations in most areas became effective more than 8 years ago (*see* 70 FR 944, January 5, 2005), we are proposing to establish for these areas the same subpart 4 SIP submission deadline that would apply for purposes of the 2006 PM<sub>2.5</sub> NAAQS (December 31, 2014), so that all states with PM<sub>2.5</sub> nonattainment areas have a reasonable amount of time to develop any additional SIP elements that may be required under subpart 4 in response to the NRDC decision. Thus, for all PM<sub>2.5</sub> nonattainment areas, the states would be required to submit any remaining attainment-related SIPs that are necessary to satisfy the requirements applicable to moderate nonattainment areas under section 189(a) of the Act no later than December 31, 2014. This proposal does not affect any action that the EPA has previously taken under section 110(k) of the Act on a SIP for a PM<sub>2.5</sub> nonattainment area. As noted in the section below, because subpart 4 incorporates the requirements of subpart 1 and affects the requirements that it subsumes, the EPA is proposing that the December 31, 2014, deadline replaces the deadlines previously set for submissions designed solely for subpart 1. By coordinating implementation of subpart 4 and subpart 1 submissions, and clarifying the deadline for submission of additional subpart 4 requirements, the proposed rule will help states and areas understand and efficiently discharge any remaining responsibilities. The proposed rule will also facilitate the processing of requests to redesignate 1997 and 2006 nonattainment areas to attainment, since clear deadlines for submissions of requirements will provide a means for identifying applicable requirements for purposes evaluating

redesignation requests.<sup>7</sup>

## **VI. What guidance is currently available to states regarding subpart 4 requirements?**

The EPA has longstanding general guidance that interprets the 1990 amendments to the CAA, making recommendations to states for meeting the statutory requirements for SIPs for nonattainment areas. *See* “State Implementation Plans; General Preamble for the Implementation of Title I of the Clear Air Act Amendments of 1990” (57 FR 13498, April 16, 1992) (the “General Preamble”). In the General Preamble, the EPA discussed the relationship of subpart 1 and subpart 4 SIP requirements, and pointed out that subpart 1 requirements were to an extent “subsumed by, or integrally related to, the more specific PM-10 requirements.” 57 FR at 13538. In recent rulemakings for individual areas published after the *NRDC* Court decision, the EPA has further elaborated on the relationship of subpart 1 and subpart 4 requirements in the context of an area that has attained the 1997 PM<sub>2.5</sub> standard and requested redesignation to attainment. “Approval and Promulgation of Air Quality Implementation Plans; Indiana; Redesignation of the Indianapolis Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter” (78 FR 20856, April 8, 2013 - proposal) (78 FR 41698, July 11, 2013 - final). The EPA believes that both the General Preamble and its recent rulemakings on Indianapolis and other areas provide helpful guidance for states in ascertaining the impact of subpart 4 requirements on their ongoing efforts to meet the 1997 and 2006 PM<sub>2.5</sub>

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<sup>7</sup> As explained in the EPA’s proposed redesignation of the Indianapolis Area to Attainment for the 1997 PM<sub>2.5</sub> Standard, in evaluating redesignation requests, the EPA’s longstanding interpretation is that “applicable requirements” are those whose deadline for submission occurs prior to the state’s submission of a complete redesignation request. 78 FR 20856, 20861.





standards.<sup>8</sup> For help with questions or further clarification, states should consult their respective EPA regional offices.

## **VII. Proposed Actions**

This rule responds to the Court's decision in *NRDC v. EPA*, supra. The Court found that the EPA erred in implementing the 1997 PM<sub>2.5</sub> NAAQS pursuant solely to the general implementation provisions of subpart 1 of Part D of Title I of the CAA, without also considering the particulate matter-specific provisions of subpart 4 of Part D. The EPA proposes to identify the initial classification of current 1997 and 2006 PM<sub>2.5</sub> nonattainment areas as moderate. For these areas, the EPA is also proposing to set December 31, 2014, as the deadline for any remaining required attainment-related and nonattainment NSR SIP submissions, pursuant to and considering the application of subpart 4. The EPA is soliciting comment, specifically on the proposed deadlines for submission of remaining SIP requirements.

There are two main categories of areas most affected by this rule: (1) areas that did not submit a SIP under subpart 1 and (2) areas which do not have a clean data determination or which have not yet submitted a redesignation request. The states and specific nonattainment areas affected for the 1997 PM<sub>2.5</sub> NAAQS are Libby, MT, San Joaquin Valley, CA and the Los Angeles-South Coast Air Basin, CA. For the 2006 PM<sub>2.5</sub>

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<sup>8</sup> See also "Redesignation of Ohio Portions of Parkersburg-Marietta and Wheeling Areas to Attainment of the 1997 Annual Standard for Fine Particulate Matter" (78 FR 53275, August 29, 2013), "Redesignation of the Detroit-Ann Arbor Area to Attainment of the 1997 and 2006 Standards for Fine Particulate Matter" (78 FR 53272, August 29, 2013); "Redesignation of the Cleveland-Akron-Lorain Area for the 1997 Annual and 2006 24-Hour Standards" (78 FR 57270, September 18, 2013), "Redesignation of Ohio Portion of the Steubenville-Weirton Area for the 1997 Annual and 2006 24-Hour Standards" (78 FR 57273, September 18, 2013), "Redesignation of Dayton-Springfield, OH Nonattainment Area for 1997 PM-2.5" (78 FR 59258, September 26, 2013).

NAAQS, the states and specific nonattainment areas affected are Fairbanks, AK, Imperial County, CA, Liberty-Clairton, PA, Provo, UT and Salt Lake City, UT. Using the most up to date status of SIP submissions and approved SIPs, the EPA will continue working with states on a case-by-case basis ,based on their stage of SIP development, to address subpart 4 requirements.

## **VIII. Statutory and Executive Order Reviews**

### *A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

### *B. Paperwork Reduction Act*

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This proposed rulemaking identifies the classification under subpart 4 for areas currently designated nonattainment for the 1997 and/or 2006 PM<sub>2.5</sub> standards and the deadline for states to submit attainment-related SIP elements for these areas that are required pursuant to subpart 4.

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any regulation subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies the rule will not have a significant economic impact on a

substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) a small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule will not impose any requirements directly on small entities. Entities potentially affected directly by this proposal include state, local and tribal governments and none of these governments are small governments. Other types of small entities are not directly subject to the requirements of this rule because this action only identifies the classification under subpart 4 for areas currently designated nonattainment for the 1997 and/or 2006 PM<sub>2.5</sub> standards and the deadline for states to submit attainment-related SIP elements for these areas that are required pursuant to subpart 4.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

#### *D. Unfunded Mandates Reform Act*

This action contains no federal mandate under the provisions of title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531-1538 for state, local

and tribal governments, in the aggregate, or the private sector. This action imposes no enforceable duty on any state, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of section 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of the UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This proposed rulemaking identifies the classification under subpart 4 for areas currently designated nonattainment for the 1997 and/or 2006 PM<sub>2.5</sub> standards and the deadline for states to submit attainment-related SIP elements for these areas that are required pursuant to subpart 4.

*E. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirement to submit SIP revisions to meet the 1997 and 2006 PM<sub>2.5</sub> NAAQS requirements under subpart 4 is imposed by the CAA. This proposed rule, if made final, would interpret those requirements as they apply to the 1997 and 2006 PM<sub>2.5</sub> NAAQS. Thus, Executive Order 13132 does not apply to this action.

In the spirit of Executive Order 13132 and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicits comments on this proposed action from state and local officials.

*F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). It would not have a substantial direct effect on one or more Indian tribes, since no tribe has to develop an implementation plan under these proposed regulatory revisions. Furthermore, these proposed regulation revisions do not affect the relationship or distribution of power and responsibilities between the federal government and Indian tribes. The CAA and the Tribal Air Rule establish the relationship of the federal government and tribes in developing plans to attain the NAAQS, and these revisions to the regulations do nothing to modify that relationship. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, the EPA specifically solicits additional comment on this proposed action from tribal officials.

*G. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks*

The EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This proposed rulemaking identifies the classification under subpart 4 for areas currently designated nonattainment for the 1997 and/or 2006 PM<sub>2.5</sub> standards and the deadline for states to submit attainment-related SIP elements for these areas that are required pursuant to subpart 4.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104-113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA is not considering the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies and activities on minority populations and low-income populations in the United States.

The EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income

populations because it does not affect the level of protection provided to human health or the environment. This proposed rulemaking identifies the classification under subpart 4 for areas currently designated nonattainment for the 1997 and/or 2006 PM<sub>2.5</sub> standards and the deadline for states to submit attainment-related SIP elements for these areas that are required pursuant to subpart 4.

### **Statutory Authority**

The statutory authority for this action is provided by 42 U.S.C. 7401, 7408, 7410, 7501-7509a, and 7601(a)(1).

### **List of Subjects in 40 CFR Part 51**

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides, Volatile organic compound.

Dated: November 15, 2013

Gina McCarthy,  
Administrator.

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